

Services Proposed For: Town of Robbins

Town of Robbins
111 W Elm St
Robbins North Carolina 27325

Internal RO#: RO_23248

Driver for Corrective Action

 Attention Needed

 Action Needed

 Action Required



Safety / Function: Replace collapsing pipe; Sinkholes forming and road sinking where vehicles and school busses traverse daily

Summary of Issues

These items result from a recent request for proposal to perform remedial services of Stormwater Control Measures for the Town of Robbins. An AQUALIS representative visited the site recently to investigate the existing conditions of a 36" CMP that runs beneath West Elm Street and discharges into a creek on the North side of the street. The upstream end of the pipe junctions at a brick-and-mortar inlet box that takes in surface flow from the grassed swale and conveys water through the pipe and under the road. This CMP is severely deteriorated along its bottom and beginning to misshape. Additionally, the upstream junction box shows signs of severe erosion and sinking around the inlet top, indicating the structures failing brick-and-mortar foundation. AQUALIS will replace the failing pipe and junction box with a new DOT grade ADS-N12 pipe and a new precast concrete stormwater junction box that is more fit for modern stormwater infrastructure. These repairs are recommended to achieve proper conveyance of stormwater runoff and prevent pipe collapses that will lead to further and more severe repairs to surrounding landscapes.

Root Cause

Aging Infrastructure

Scope of Work

AQUALIS shall provide the Services and Deliverable(s) as follows:

- Mobilize all equipment and labor to the site.
- Install necessary BMPs, barricades, and signage as needed
- Wet saw cut and demo approx. 20' X ~4.5' of asphalt over the damaged CMP
 - Expose portion of pipe running under Elm St
- Utilizing an excavator on the outfall side of Elm St, dig trench to expose remainder of pipe and remove broken concrete and construction rubble
- Utilize excavator to dig up brick-and-mortar yard inlet and 50' ft of damaged CMP from the upstream junction to the outfall
 - Use machinery with chains/straps to lift and remove pipe and structure from trench
- Install approx. 15 tons of new 57 stone subbase for pipe bedding
- Install 50' of new DOT grade ADS N-12 double wall piping and precast inlet/junction box
 - Ensure a minimum of 2 ft. of clearance between top of pipe and proposed surface level
- Secure pipe to junction box connection
- Backfill trench with clean fill
- Install subbase aggregate where asphalt is to be poured for the road

- Restore road with new hot asphalt to match surrounding elevations
- Perform general site cleanup
- Demobilize
- Dispose of waste at an appropriate offsite facility

Special Project Notes

- *This proposal is valid for 30 days
- *Assumes existing pipe is misshaped due to crushing and not a manufactured oval shape
- *Assumes enough clearance under the road between top of pipe and proposed surface level to use round HDPE and not oval piping

Total Cost: \$40,714.29

This Work Order is issued pursuant to that certain Master Services Agreement, by and between New Restoration and Recovery Services, LLC d/b/a AQUALIS and the Client, dated 3/1/2024 (the “Agreement”). Capitalized terms used and not defined in this Work Order shall have the meaning set forth in the Agreement.

This scope of work is confidential to AQUALIS, Town of Robbins, and their respective representatives. Without the prior written consent of AQUALIS, Town of Robbins shall not, and shall not permit any of its representatives to, disclose to any person: (a) the existence or contents of this scope of work; (b) the fact that investigations, discussions, or negotiations are taking or have taken place concerning a transaction by AQUALIS and Town of Robbins, including the status thereof; or (c) any terms, conditions, or other matters relating to this scope of work.

Signed _____
Town of Robbins authorized signature

Date _____

Signed _____
AQUALIS authorized signature

Date _____





MASTER SERVICES AGREEMENT

THIS MASTER SERVICES AGREEMENT (this “**Agreement**”) is effective as of March 1, 2024 (the “**Effective Date**”), by and between New Restoration and Recovery Services, LLC d/b/a AQUALIS and Town of Robbins (the “**Client**”).

1. **WORK.** AQUALIS shall perform certain Work for Client (the “**Work**”) as set forth in one or more work orders or proposals in the form of the Proposals hereto (each a “**Work Order**”). All Work Orders issued under this Agreement and all Work performed pursuant to Work Orders shall be subject to the terms of this Agreement and any conflict in terms shall be resolved in favor of the Work Order. Client may, upon written agreement by AQUALIS, request AQUALIS to make changes in the scope of the Work, provided that if any requested changes cause an increase in the cost or time required for the performance and delivery, Client shall execute an agreement, in form and substance satisfactory to AQUALIS, providing for an equitable adjustment in the compensation payable for the Work and the time for its performance and delivery. This includes additional costs as related to unforeseen permits, fees and changes in required coverages.

2. **ACCESS AND AUTHORIZATION.** Client shall provide AQUALIS with all necessary access to the area(s) in which the Work is to be performed. Unless otherwise specified, Client warrants that it has obtained (or will obtain prior to performance of the Work) all necessary permits, licenses, consents and authorizations required in connection with the performance of the Work. Delays related to Client’s change in schedule or delays in obtaining access to the property or required documentation, authorizations or permits, in each case, may result in additional fees.

3. **STANDARDS; WARRANTY.** AQUALIS will perform the Work in a competent, professional manner in accordance with the customary standards of performance of the industry. Unless otherwise specified in the applicable Work Order, AQUALIS warrants that the Work will be free from material defects in parts and workmanship for a period of one (1) year from the date of completion of the Work. AQUALIS does not represent or warrant to Client that the Work performed and/or reports delivered hereunder will achieve any results for Client, other than as expressly set forth in this section or in the Work Order and AQUALIS hereby disclaims all other warranties, express or implied. Client agrees to defend, indemnify and hold AQUALIS harmless from and against any and all damages, delays, costs, injuries or death associated with any subterranean structures or utilities that were not called to the attention of AQUALIS and correctly shown on the plans furnished to AQUALIS.

4. **TERM; TERMINATION.** This Agreement will become effective on the Effective Date and will continue until terminated in accordance with this Agreement. Either party may, at any time, terminate any Work Order or this Agreement, in whole or in part, for any reason or no reason at all, upon thirty (30) calendar days’ prior written notice to the other party. Termination of this Agreement in its entirety will, automatically and without further notice, be deemed a termination of all outstanding Work Orders unless otherwise specifically stated in the applicable termination notice. Subject to the terms of this Agreement. Each party shall also have the right to terminate this Agreement or any Work Order, or any portion thereof effective immediately upon delivery of a termination notice (or at such future date as may be set forth in such termination notice), if the other: (i) materially violates any of the terms or provisions of this Agreement and such violation, if of a type that can be cured, is not cured within fourteen (14) business days of written notice of such violation, or (ii) becomes insolvent or declares bankruptcy, or the terminating party reasonably believes the non-terminating party is reasonably likely to become insolvent, declare bankruptcy, or be subject to any other similar proceedings or otherwise fail to timely pay any amounts owed in accordance with the terms of this Agreement or the applicable Work Order.

5. **PAYMENT.** Payment for the Work shall be made by Client in accordance with and at the times set forth in the applicable Work Order. Unless otherwise stated on applicable work order, payment terms shall be 15 days for preventative maintenance and inspection work or 30 days for repair, vac, hydro-excavation and CCTV work, from date of service. The provisions of this Section 5 and the payment provisions of the applicable Work Order(s) shall survive any expiration or termination of this Agreement.

6. **INDEMNIFICATION.** To the fullest extent allowed by law, Client shall defend, indemnify, and hold harmless AQUALIS and its affiliates, and its and their respective officers, directors, managers, agents, employees, consultants, independent contractors, advisers, partners, joint ventures, representatives, successors and permitted assigns (collectively, the “**Indemnified Parties**”), from and against any and all liabilities, damages, judgments, obligations, claims, demands, losses, causes of action, settlements, deficiencies, assessments, awards, expenses, fines, costs, and penalties, including, without limitation, court costs and attorneys’ fees, consultants’ fees, and other fees and disbursements incident thereto of any nature whatsoever (whether based on tort, breach of contract, product liability, patent, copyright, or other proprietary rights infringement, or otherwise) (collectively “**Losses**”), arising directly or indirectly from or out of: (i) any act or omission of Client and/or its affiliates and its and their respective officers, directors, managers, agents, employees, consultants, independent contractors, advisers, partners, joint ventures, representatives, successors and permitted assigns (each a “**Client Party**”, and collectively the “**Client Parties**”); (ii) any failure of any Client Party to obtain any necessary permits licenses, consents or authorizations to be obtained by Client in accordance with this Agreement; or (iii) any other failure of Client or any other Client Party to comply with the terms of this Agreement (including any Work Order).

7. **LIMITATION OF DAMAGES.** Except as set forth in Section 2 and Section 3, in no event shall either party be liable to the other in contract or tort, including negligence and strict liability, for consequential, incidental, punitive, indirect, or special damages of any kind or character, including, without limitation, any delay damages, lost opportunity damages or lost revenues/profits, incurred by Client or its affiliates, customers, agents, or employees in connection with this Agreement. In no event shall AQUALIS be liable to any person for damages in excess of the aggregate amount paid by Client to AQUALIS under the applicable Work Order.

8. **INDEPENDENT CONTRACTOR** It is understood and agreed that AQUALIS is acting as an independent contractor in the performance of the Work. Nothing herein contained shall be deemed to create an employment, agency, partner, or joint venture relationship between AQUALIS and Client.

9. **NON-SOLICITATION OF EMPLOYEES.** During the term of this Agreement, and for a period of two (2) years thereafter, Client shall not, directly or indirectly, for the Client’s own benefit or for the benefit of others, solicit for hire as an employee, consultant or otherwise any of personnel of AQUALIS who have performed services under this Agreement, without the express written consent of AQUALIS.

10. CONFIDENTIAL INFORMATION. Client agrees to keep the specific terms and conditions of this Agreement confidential and not to disclose such information to any other person or entity and such terms and conditions of this Agreement shall be included in the term "Confidential Information" (defined below). Client may, during the course of Client's engagement hereunder, have access to, and acquire knowledge of or from, materials, data, strategies, systems, or other information relating to AQUALIS, or its parents, related, affiliated or subsidiary companies, which may not be accessible or known to the general public (the "**Confidential Information**"). Any such knowledge acquired by Client shall be kept confidential and shall not be used, published, or divulged by Client to any other person, firm, or entity, or in any advertising or promotion regarding Client or the Work, or in any other manner or connection whatsoever, without first having obtained the prior written permission of AQUALIS, which permission AQUALIS may withhold in its sole discretion. The provisions of this Section 10 shall survive the expiration or termination of this Agreement.

11. NOTICES. All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (i) upon confirmation of facsimile or delivery of e-mail, (ii) one (1) business day following the date sent when sent by overnight delivery and (iii) five (5) business days following the date mailed when mailed by registered or certified mail return receipt requested and postage prepaid at the following address:

If to AQUALIS:

New Restoration and Recovery Services, LLC

d/b/a AQUALIS

2510 Meridian Parkway

Durham, NC 27713

Attention: Richard Matero, Chief Executive Officer

Email: rmatero@aqualisco.com

If to the Client, to the address set forth on the signature page hereto.

Either party may change its respective address for notice by providing the other party with written notice of such change in accordance with this Section 11.

12. ASSIGNMENT; AMENDMENT; BENEFIT; BINDING EFFECT. Except as provided in this paragraph, neither party shall assign this Agreement, any Work Order, or any interest in them without the other party's prior written consent, which will not be unreasonably withheld or delayed; provided, however, that AQUALIS, in its sole discretion and without Client's consent, may assign this Agreement or Work Order to a subsidiary, affiliate or lender. This Agreement (including all Work Orders) shall inure to the benefit of, and be binding upon, the parties to this Agreement and their respective successors and permitted assigns. No modification of this Agreement shall be valid or binding unless such modification is in writing, duly signed by both parties.

13. GOVERNING LAW. This Agreement and the rights and obligations of the parties shall be governed in all respects, including validity, interpretation and effect, by the laws of the State of North Carolina (without giving effect to its choice of law or conflict of laws principles).

14. WAIVER OF JURY TRIAL. Client and AQUALIS irrevocably waive their respective rights to trial by jury on any action, proceeding, or counterclaim, whether at law or in equity, brought by either Client or AQUALIS.

15. SURVIVAL OF PROVISIONS. The expiration or termination of this Agreement or any Work Order shall not affect the provisions, and the rights and obligations set forth therein, which either (i) by their terms state or evidence the intent of the parties that the provisions survive the expiration or termination, or (ii) must survive to give effect to the provisions.

16. COUNTERPARTS. This Agreement and any Work Orders may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument. This Agreement and any Work Orders may be executed by one or more parties using an electronic signature, which the parties agree shall be binding for all purposes and shall constitute an original signature.

17. NON-WAIVER. If either party fails to give notice or enforce any right under this Agreement, or any Work Order, the failure shall not constitute a waiver of the right, unless the parties reduce the waiver to writing and the waiving party signs the writing. If a party waives its right in writing, the waiver shall not constitute a waiver of any other right or of a subsequent violation of the same right.

18. EXCUSE OF PERFORMANCE. No liability for breach of this Agreement will result from a reasonable delay in performance or nonperformance caused by circumstances beyond the reasonable control of the party failing to perform or whose performance is delayed including, but not limited to, war, governmental regulations or control, insurrection, pandemics, riot, fire, explosion, flood, sabotage, inability to obtain any material or Work, acts of God, or any other cause beyond the reasonable control of the party failing to perform or whose performance is delayed.

19. AUTHORITY; NO THIRD PARTY BENEFICIARIES. The parties each represent that the individuals executing this Agreement have the authority to bind the entities on behalf of which they sign. The rights and remedies of each party are cumulative and not exclusive of any rights and remedies which that party would otherwise have at law or in equity. No third party beneficiaries are created by this Agreement or Work Order, except for the Indemnified Parties. To the extent allowed by law; if any provision of this Agreement or Work Order is determined by law to be unenforceable, the remainder may be enforced.

20. ENTIRE AGREEMENT. This Agreement (including all Work Orders) contains the entire agreement of the parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the parties that this Agreement (including all Work Orders) alone sets forth the terms on which the parties have mutually agreed.

{Signatures on following page(s)}

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the Effective Date.

NEW RESTORATION AND RECOVERY SERVICES, LLC
D/B/A AQUALIS

By: _____
Name: Richard Matero
Title: Chief Executive Officer

CLIENT
Town of Robbins

By: _____
Name:
Title:

Client Address for Notices:

